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EXAMINER

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ART UNIT

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/839,037
Filing Date: April 19, 2001
Appellant(s): NAISH ET AL.

Paul D. Amrozowicz
For Appellant

EXAMINER'S ANSWER

MAILED

JUN 24 2005

GROUP 3600

This is in response to the appeal brief filed 3/25/05.

AS

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Claimed Subject Matter*

The summary of claimed subject matter contained in the brief is correct only with respect to effective arguments to claim 14.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The appellant's statements of the grounds of rejection to be reviewed in the brief is substantially incorrect. Except for Group 1 directed to claims 14-16 and 18, the remaining alleged grounds of rejection for review, namely groups 2 and 3, directed to claims (17,19,20,22,23) and (21), respectively, fail to even argue what the claim recites, let alone present new arguments. **Further to this end, the Summary of Claimed Subject Matter only presents a concise explanation to claim 14. Thus, the entire appeal rises and falls with regard to the patentability of independent claim 14.**

(7) Response to Argument

Appellants have failed to rebut the prima facie case of obviousness established in the Final Office Action dated 8/24/04 because (1) Appellant's alleged distinctions particularly directed to Muhme U.S. 5,886,634 are based on functional language found in claim 14 and (2) the combined teaching of Muhme and Cusack et al U.S. 6,493,724 render claim 14 obvious.

I. Claims 14-16, 18, 103(a)- Muhme in view of Cusack et al

1. Appellants would have the Board believe that Muhme does not disclose the functional attributes of claim 14 because the exact words of the Muhme disclosure do not mirror the functional language used in it. For example, Appellants argue that there is no disclosure in Muhme of a *network* "receiving secure part information", but rather only an interface 40 of the base station 18 to which it is coupled receives such information. To the contrary, the component parts of the Muhme system are read as a network. They are disclosed as comprising a base station 18, having an inventory control system/interface 124, an inventory database 38, and a computer interface 40 which retrieves egress and ingress information from the database 38. The examiner interprets this combination as a network and is entitled to the full breadth of the ordinary meaning of a "network" as understood by persons skilled in the art. *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342 [60 USPQ2d 1851] (Fed. Cir. 2001). Likewise, Appellants attempt to distinguish Muhme from claim 14 by arguing that there is no selective communication between a "customer client" and a "supplier client". Again

Art Unit: 3627

Appellants arguments exceed the worth of the words recited in the claims. In Muhme, the base station 18 and the ID tags 20 are designed to track and monitor inventory out and into the facility by people whom the facility does not have confidence. This is underscored by the disclosure of the base station acting adversely and communicating remotely to another party in the facility when an unauthorized removal is detected (col. 1, lines, 60-66). Furthermore, any distinction between a supplier/owner and customer client is blurred by the fact that in such facility, customers and suppliers constantly move material in and out (col. 1 lines 31-39) of the facility and are often the corporate alter egos of each other. That is, within such a facility, the supplier and customer can be under the same corporate scheme, e.g. a division of the facility corporation can be its client. Thus, the distinction between customer client and supplier cannot be made in the context of Muhme.

In terms of the entire claim 14, in Muhme, a processor effects the final outcome as is recited in claim 14. The collective elements of the processor include an inventory interface 124 effecting updating of inventory, a base station 18 (col. 3, lines 45-52) having an interface 40, inventory control system 36 and inventory database 38. These elements are each so inextricably connected as constitute a "processor". Regardless of where one defines the amorphous term "processor", it is nevertheless clear that Muhme answers to almost all the recitations set forth in claim 14. To evidence this, the below chart sets forth the correspondence between claim elements.

Claim 14

Muhme 5,886,634

a memory operably coupled to the processor 40 with access to the base station 18 ; processor and having program instructions stored therein, the processor being operable to execute the program instructions,

processor 40 with access to the base station 18 ;

the program instructions including:

receiving secure area part reception information via a computer network

(wireless interface 102 which communicates egress and ingress information of containers 50));

updating secure area inventory information stored on a database by the data processing system using the secure area part reception information

(inventory interface 124)

receiving secure area part issuing
information from the customer client via
the computer network

(wireless interface 102 which communicates
egress and ingress information of containers
50); and

updating the secure area inventory
information using the secure area part
issuing information

(inventory interface 124 updated
contents of database of items in
inventory).

Despite this congruence, Appellants argue that it is the base station 18 and not the processor in the computer interface 40 which receives secure part information and updates the inventory based on this information. It is conceded that the base station 18 in Muhme at least initially carries out these functions, but the term “processor” as set

Art Unit: 3627

forth above is read as a whole to include both devices. For Appellants to create such a stir over whether the base station 18 or the processor in the computer interface 40 is carrying out the recited functions is to cloud the real issue here, namely, that in Muhme, a processor, regarding parts located in secure inventory:

- (1) receives part incoming information and updates inventory; and
- (2) receives part outgoing information and updates inventory.

Appellants attempt to further distinguish claim 14 over Muhme by asserting that the base station "108 (sic) nor any portion thereof receives secure area part reception information from a customer client via computer network". The Board must reject such arguments as patently misplaced for two reasons. First, any reference Appellants make from the functional language of lines 4-5 of claim 14, namely,

... *configured* to selectively
communicate with a customer
client and a supplier client via the
computer network

must be taken with the smallest regard to the function recited. That is, since Appellants are arguing this functional language as a point of novelty, yet have not recited any structure for obtaining the desired result, the language remains merely functional without weight, *see, General Electric Co. v. Walbash* 304 U.S. 364, 37 USPQ 466. Also, it appears Appellants' definition of a "computer network" differs from the network of aggregate component computer parts of Muhme. Muhme discloses this aggregate as comprising a base station 18, having an inventory control system, an inventory

Art Unit: 3627

database 38, a computer interface 40 which retrieves egress and ingress information from the database 38. Webster's Collegiate College Dictionary Tenth Edition defines network as "(2)(b) a system of computers, terminals and database connected by communication lines". Thus, the system disclosed by Muhme clearly answers the definition of network in that inventory monitoring done by the base station 18 in Muhme is done via a network.

2. Even if the Board were to accept as proper the functional language establishing communications between a customer client and a supplier client via a computer network, then the secondary reference to Cusack et al. would make obvious this limitation. Cusack et al. is relied on to establish the obvious arrangement of a customer client (buyer 18) and supplier client (provider 16) communicating through a computer network WIM12. Like the system in Muhme, the Cusack et al. involves a database 14 containing an inventory of samples belonging to the supplier / provider (col.5, line20) which, in one embodiment, are for sale (col. 6 line 12). The buyer/ customer uses the network to access the inventory database 14 and to purchase an item and, once done, the network automatically updates the inventory database to account for the removed / sold item (col.11, line 12 et seq.). Thus, there is clear motivation for modifying Muhme to use the base station 18 in Muhme in the same way as the WIM in Cusack et al. connects customer and suppliers to a common inventory database through a common network.

Therefore, the combination of Muhme in view of Cusack et al. makes obvious claim 14.

II. Claims 17,19,20,22,and 23

Other than describe Nelson without setting forth any distinction between the claim language and the reference, Appellants have not advanced arguments other than restate those set forth above regarding claims 14-16,18 and hence claims 17,19,20,22,and 23 are deemed to rise and fall with claim 14.

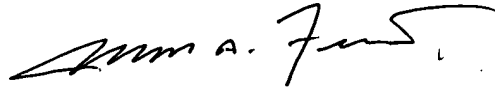
III. Claim 21

Other than describe Byford without setting forth any distinction between the claim language and the reference, Applicant have not advanced arguments other than restate those set forth above regarding claims 14-16,18 and hence claim 21 is deemed to rise and fall with claim 14.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Joseph A. Fischetti
Primary Examiner
Art Unit 3627



June 21, 2005

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← Appral Conference
conferees not listed
or mislabeled.